



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/754,700	01/12/2004	Andrew F. Gelson	J2167.0478	9092
21967 7590 03/18/2008 HUNTON & WILLIAMS LLP INTELLECTUAL PROPERTY DEPARTMENT 1900 K STREET, N.W. SUITE 1200 WASHINGTON, DC 20006-1109			EXAMINER EBERSMAN, BRUCE I	
			ART UNIT 3691	PAPER NUMBER
			MAIL DATE 03/18/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/754,700

**Applicant(s)**

GELSON ET AL.

**Examiner**

BRUCE I. EBERSMAN

**Art Unit**

3691

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-946)
- 3) ☒ Information Disclosure Statement(s) (PTO/SE/US)  
Paper No(s)/Mail Date 8/24/05
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 30, 31 objected to because of the following informalities: There are 2 claims numbered #30, the examiner will presume/examine as if the 2nd claim 30 is #31. Likewise, claim 30 (first one) is a "like-king" exchange, which the examiner believes was intended to say "like—kind" and will assume this to be a typo. Appropriate correction is required.

### ***Requirement for Information Under 37 CFR 1.105***

1. Applicant and the assignee of this application are required under 37 CFR 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.
2. Rule 1.105 allows the Examiner, in the course of examining or treating a matter in a pending application, to require the submission from Applicant and his assignees of information as may be reasonably necessary to properly examine or treat the matter. Applicant and the assignee of this application are required under 37 CFR 1.105 to provide information that the examiner has determined is reasonably necessary to the examination of this application.

3. The information is required to enter in the record the art suggested by the applicant as relevant to this examination in the IDS. Applicant has provided 242 references in his IDS of 8/24/05. A sampling of references indicates art unrelated to the applicants invention.

<u>IDS #</u>	<u>Document #</u>	<u>Name</u>	<u>Comments</u>
1.	2001/0011241	Nemzow	Method for localizing currency valuation
2.	2001/0025264	Deaddiao	Objected oriented system for managing complex financial instruments. (data processing in the financial services industry)
3.	20010032217	Huang	Method and apparatus for generating structured documents for various presentations and the uses thereof.

Information is required to identify the most pertinent references from the 242 references cited by Applicant.

4. The applicant is reminded that the reply to this requirement must be made with candor and good faith under 37 CFR 1.56. Where the applicant does not have or cannot readily obtain an item of required information, a statement that the item is unknown or cannot be readily obtained may be accepted as a complete reply to the requirement for that item.

5. The fee and certification requirements of 37 CFR 1.97 are waived for those documents submitted in reply to this requirement. This waiver extends only to those documents within the scope of this requirement under 37 CFR 1.105 that are included in the applicant's first complete communication responding to this requirement. Any supplemental replies subsequent to the first communication responding to this requirement and any information disclosures beyond the scope of this requirement under 37 CFR 1.105 are subject to the fee and certification requirements of 37 CFR 1.97.

6. This requirement is an attachment of the enclosed Office action. A complete reply to the enclosed Office action must include a complete reply to this requirement. The time period for reply to this requirement coincides with the time period for reply to the enclosed Office action.

***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The claimed invention is directed to non-statutory subject matter.

Art Unit: 3691

Claim 31 is a structure for facilitating a like kind exchange. A structure does not fit in one of the statutory categories, and is thus non-statutory. Appropriate correction is required.

***Claim Rejections – 35 USC § 101: Legal Methods Not Patent-Eligible***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-31 are not eligible for patenting under section 101 because they claim a legal method, not within the useful arts, and because they depend for their operability on positive law, rather than laws of nature.

Here, the invention is a method of reducing tax liability under the U.S. tax laws by operation of IRC 1031 and 1033. The invention thus only operates in the context of a legal system containing IRC 1031 and 1033 or (perhaps) provisions analogous thereto, and in any event depends for its utility on the existence of a particular legal framework. Given that the invention operates completely outside the “laws of nature,” it is appropriate to question whether the invention concerns patent-eligible subject matter at all. *Cf. In re Comiskey*, No. 2006-1286 (Fed. Cir. Sept. 20, 2007), Slip Op. at 10 (finding the invention in that case to be in a “field of endeavor that both the framers and Congress intended to be beyond the reach of patentable subject matter”).

***Section 101 Utility Requirement***

An assumption underlying the discussion of "useful arts" in the sources cited above is that innovations in the useful arts depend on the laws of nature, not the laws of man. Accordingly, an invention that merely recites an innovation in tax compliance strategy under the current version of the Internal Revenue Code cannot be patentable-eligible subject matter under 35 U.S.C. § 101, as informed by the Constitutional purpose of promoting progress in the "useful arts."

The fact that applicant's invention depends for its operability on state of the positive law provided by the Internal Revenue Code provides a strong basis for rejecting it under section 101. Under section 101, a claimed invention can only be patented if it is "useful." As the Federal Circuit has explained, "[t]he utility requirement of § 101 mandates that the invention be operable to achieve useful results." *In re Swartz*, 232 F.3d 862, 863 (Fed. Cir. 2000). With respect to applicant's claims here, the question of whether the claimed method could achieve useful results would depend on whether the resultant claim would be issued by the USPTO and then found infringed in a court having jurisdiction over a patent infringement dispute involving the patent.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 3691

3. Claims 1,10,11, 30, 31 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase Limited contribution obligation does not have a standard definition. It is unclear what the phrase Limited contribution obligation means. The specification only states that a bank or trust provides this obligation (0030). The examiner will assume for the purposes of examination that a limited contribution obligation is a form of loan.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4,6,8,9,10,12,14,15,16,19,31 rejected under 35 USC 102B over Beyond 1031, Journal of accountancy, by Ronald and Brigitte Raitz July 2000, pp 1-10.

(Beyond 1031)

As per claim 1, "Beyond Section 1031" discloses;  
establishing an accommodating entity to facilitate the like-kind exchange, (p.5, para. 2, qualified intermediary)



Art Unit: 3691

the accommodating entity being funded by a limited contribution obligation from a third party; (p.7, exhibit #3, 3<sup>rd</sup> party lender, application says bank or trust provides funding 0030)

receiving a request from an exchanger that identifies a replacement property to utilize in the like-kind exchange; (p. 5, para. 1, replacement property identified to 3<sup>rd</sup> party intermediary)

establishing a property owning entity to acquire an ownership interest in the replacement property, (p.6, para. 4)

the property owning entity being capitalized through a contribution by the accommodating entity of a

promissory note in an amount appropriate for the like-kind exchange; (p. 6, example, para. 4, funds are directed from exchanger to the intermediary (accommodating entity) to the property owning entity)

and exchanging a relinquished property of the exchanger with the replacement(p. 6, para. 7)property.

As per claim 2, "Beyond Section 1031" discloses an exchanger which is a corporate entity. (p. 7, para. 4, company Shop Fast)

As per claim 3, "Beyond Section 1031" discloses an LLC entity which is an exchanger. (p. 10, para. 3, Pinnacle Care LLC)

Art Unit: 3691

As per claim 4, "Beyond Section 1031" discloses an exchanger which is an individual.

(p. 8, para. 1)

As per claim 6 "Beyond Section 1031" discloses a property owning entity being an LLC set up by a qualified intermediary. (p. 6, para. 4)

As per claim 8, "Beyond Section 1031" discloses replacement property can be held by the property owning entity. (p. 4, exhibit 2, bullet 1, ie parking entity)

As per claim 9, "Beyond Section 1031" discloses making improvements to the replacement property to increase it's value. (p. 6, para. 7)

As per claim 10, "Beyond Section 1031" discloses wherein the amount of the limited contribution obligation is related to the cost of the initial acquisition of the replacement property and the cost of the improvements. (p. 7, exhibit 3, bullet 3, and further para. 4)

As per claim 12, "Beyond Section 1031" discloses a property owning entity acquiring an ownership in the replacement property. (p.6, para. 4). A fee simple interest means that property owner is the sole owner, and is the most common form of ownership.

As per claim 14, "Beyond Section 1031" discloses that exchanger supervises construction but, the intermediary disburses all funds, . (p. 5, bullet 2, 3) Further, the

Art Unit: 3691

Qualified intermediary can set up a separate entity which owns and manages the property. (p. 6, para 4)

As per claim 15, "Beyond Section 1031" discloses the property owner obtaining financing for the property. (p. 6, para. 4)

As per claim 16, "Beyond Section 1031" discloses a first loan from the exchanger. (p. 6, para. 4).

As per claim 19, "Beyond Section 1031" discloses a loan from the exchanger ( p. 6, para 4) and further a second loan which was a construction loan. (p. 7, para. 4)

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 11, 18, 20, 21 and 24 rejected under 35 U.S.C. 103(a) as being unpatentable over "Beyond Section 1031".

As per claim 11, "Beyond Section 1031" discloses limited contribution obligations (p.7, exhibit 3, bullet 3, and further paragraph 4), ie a loan from a bank. "Beyond Section 1031" does not specifically disclose the percent of the acquisition cost being 5%. However, it would be obvious to one of ordinary skill in the art to denominate acquisition cost contributions (loan) in a variety of percentages depending on the amount of funding that the property co. could obtain on it's own with smaller percentages desirable for the purpose of limiting liability to the exchange company.

As per claim 18, "Beyond Section 1031" discloses that the exchanger can lend funds through the qualified intermediary to a property co. (p. 6, para. 4) for acquisition and that construction exchanges can be used to fund construction. (p. 6, para. 5) "Beyond Section 1031" does not specifically disclose first loan percentages of approximately 30% of the anticipated cost of construction and development of the replacement property. However, one of ordinary skill in the art of real-estate finance and exchange would recognize that the exchanger might be a potential source of first tier funding to a property co as, a construction exchange might not have enough property equity to allow for funding of the project using traditional loans against solely the property. It would

therefore have been obvious to one of ordinary skill in the art at the time of the invention to modify the exchanger loaning funds to the property co. for the purpose of acquisition or financing to incorporate a percentage of 30% which would allow for either construction funding or to provide equity suitable to allow the property co. to obtain said funding.

As per claims 20, "Beyond Section 1031" discloses loans from the exchanger ( p. 6, para 4). However, "Beyond Section 1031" does not specifically disclose a second loan from the exchanger. However it would have been obvious to one of ordinary skill in the art at the time of the invention that the concept of loaning and mortgages are synonymous with multiple loans and mortgages as, construction projects take time and often run over requiring further loans or funding.

AS per claim 21, "Beyond Section 1031" discloses a second loan in the form of a construction loan. (p.7, para. 4). However, "Beyond Section 1031" does not specifically disclose a 4<sup>th</sup> party. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to conclude that a 2nd loan could be obtained from another party (4th) given that multiple banks and entities are often involved in complex tax related transactions.

Art Unit: 3691

As per claim 24, "Beyond Section 1031" discloses a 2<sup>nd</sup> loan but, does not specifically disclose that the amount paid by the accommodating entity will reduce principal of the accommodating entity under the promissory note used to capitalize the property owning entity. However, one of ordinary skill in the art at time of the invention would recognize that loans and mortgages of various types are used in construction type 1031 exchanges and that further reduction in principle through loan payment is well known.

7. Claims 5, 13, 22, 23 rejected under 35 U.S.C. 103(a) as being unpatentable over "Beyond Section 1031" as applied to claim 1 above, and further in view of IRS Revenue Ruling 200251008 (plr-106793-02), "RR"

As per claim 5, "Beyond Section 1031" discloses a 3<sup>rd</sup> party lender (p.7, exhibit 3, bullet 3) but, does not specifically use the words "bank or trust company". RR (p. 6, para. 1) teaches bank construction loans. It would therefore have been obvious to one of ordinary skill in the art at the time of the applicants invention to combine 3<sup>rd</sup> party loan disclosure of "Beyond Section 1031" with the bank teachings of RR for the purpose of obtaining a bank construction loan from a known supplier of funds for a 1031 exchange. ( p.6, para. 1 describes one such exchange using a bank loan)

As per claim 13, "Beyond Section 1031" does not specifically disclose ground leases in the replacement property. RR p. 6 last paragraph teaches a ground lease of 30 or more

years being acceptable for to a 1031 exchanges. It would therefore have been obvious to one of ordinary skill in the art at the time of the applicants invention to combine the exchange transaction disclosures of 1031 exchange with the teachings of RR that a ground lease of 30 or more years would be acceptable to the IRS as an element of a like-kind exchange for the purpose of creating a like kind exchange construction exchange transaction. (p.6, last paragraph).

As per claim 22, "Beyond Section 1031" discloses multiple types of loans but, does not disclose recourse loans. "RR" (p. 4, para. 1 teaches recourse loans (mortgage) which are guaranteed by the taxpayer as part of a 1031 transaction. It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the loan disclosures of "Beyond 1031" with the recourse mortgage teachings of "RR" for the purpose of creating a transaction where at least part of the second loan is recourse by agreement and for the protection of the granting bank. (p. 4, para. 1)

As per claim 23, "Beyond Section 1031 teaches 2<sup>nd</sup> loans. But does not disclose recourse or percentages of recourse. RR teaches full recourse mortgages (p. 4, para.1) but does not teach percentages.. However, it would be obvious to one of ordinary skill in the art at the time of the invention to utilize a recourse mortgage (ie claim 22) with

various percentages depending on the relative level of protection required by the bank.

(p. 4, para. 1).

8. Claim 17 rejected under 35 U.S.C. 103(a) as being unpatentable over "Beyond Section 1031" as applied to claim 1 above, and further in view of ComNet Realty, Summary, "ComNet".

As per claim 17, "Beyond 1031" does not disclose "non-recourse" loans. ComNet teaches non-recourse loans for the 1031 compliant exchange funding methods (heading) . It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the non-recourse funding teachings of "ComNet" with the disclosure of "Beyond 1031" for the purpose of creating a "conservative" (last paragraph) investment.

9. Claim 7 rejected under 35 U.S.C. 103(a) as being unpatentable over "Beyond Section 1031" as applied to claim 1 above and further in view of "Overview of the Financial Sector", 2002 ("Overview")

As per claim 7, "Beyond Section 1031" discloses an Accommodating Entity discloses an accommodating entity (p. 5, para. 2) but does not specifically disclose a nominee trust being used as an accommodating entity. " Overview (page 1, para. 4 teaches a nominee trusts for the purpose of holding assets in the name other than the client's



name. It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine section 1031's disclosure of accommodating entity's with the nominee trusts of "Overview)for the purpose of holding assets in a name other than that of the clients thereby preserving privacy.

10. Claim 29 rejected under 35 U.S.C. 103(a) as being unpatentable over "Beyond Section 1031" as applied to claim 1 above in view of "Park Your Reverse Exchange"

As per claim 29, "Beyond Section 1031" does not specifically disclose that the accommodating and the property owing entity specifically disavowing agency relationships with the exchanger. However, Park Your Exchange teaches "arms-length" lease transactions with real burdens and benefits (p. 5, last paragraph) for the purpose of convincing the IRS that the transaction is valid. One of ordinary skill in the art would recognize that by purposely showing an arms-length transaction with burdens and benefits, the entities are implicitly disavowing any agency relationships. It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the disclosure of "Beyond Section 1031" and the purposeful separation teachings of "Park Your Reverse Exchange" to create a contractual agreement where the entities are both implicitly and explicitly disavowing an agency relationship by both the context and the content of their agreement.

Art Unit: 3691

11. Claims 25-28, 30 rejected under 35 U.S.C. 103(a) as being unpatentable over "Beyond Section 1031" as applied to claim 1 above in view of "Park Your Reverse Exchange", Ronald L Raitz and Bridgett M Raitz CPA pp. 1-6 further in view of "CFLA Leasing Glossary, 2001"

As per claim 25, Beyond Section 1031 discloses

the property owning entity leasing the replacement property (p4. exhibit 2, bullet 2) to pay a debt service on the replacement property.(p.7 exhibit 3, bullet 2, interest payments)

Beyond Section 1031 does not specifically disclose arms-length leasing terms and a purchase option. "Park your Reverse Exchange" teaches warehousing replacement property using an Arms-length transaction. (p.5, last paragraph)

Therefore It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the leasing disclosures of Beyond 1031 with the arms-length dealings teachings of "Park Your Exchange" for the purpose of convincing the IRS that the business deal had real burdens and benefits for the participants. ( p5, last para.)

"Beyond 1031" and "Parking Your Exchange" do not specifically detail a purchase option combined with the lease. However, CFLA p. 8 teaches a fixed purchase option term for a lease for the purpose of allowing the lessee the right to purchase at a pre-

Art Unit: 3691

agreed price at the end of the leasing time period. It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the leasing and arms-length disclosures of "Beyond 1031" and "Parking Your Exchange" with the teachings of CFLA that purchase options are well known term associated with any operating or purchase option leasing

As per claim 26, "section 1031" discloses the property owning entity leasing the property (p4. exhibit 2, bullet 2) to pay debt service (p.7, exhibit 3, bullet 2). "Beyond 1031 " does not specifically disclose operating costs, and profits equal to the amount at risk amount of the property owning entity but teaches the need to maintain an arms length relationship and further the need to show real benefits and burdens. CFLA p. 8 teaches a Full Payout lease where the lease payments compensate the lessor for all costs including a reasonable rate of return.

One of ordinary skill in the art at the time of the invention would recognize that structuring an arms length transaction with real benefits and burdens would include showing reasonable profits proportional to the capital at risk. It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the property owning entity leasing disclosures and fair dealings requirements of "Beyond 1031" to create an "arms length lease" which compensated the leasing party proportional to capital at risk.

Art Unit: 3691

As per claims 27, and 28, "Beyond 1031" discloses the concept of leasing (p. 7 exhibit 3), however, lease terminology such as "purchase option" (claim 27) and "put rights", ie option to sell (claim 28) are not specifically disclosed. CAFLA teaches put options (p.17, top left margin) and Purchase options (p. 17) as standard leasing transaction terminologies. It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the disclosed concept of leasing with standardized leasing terminology teachings of CAFLA for the motivation of controlling the end disposition of the property. (see page 3).

As per claim 30, "Beyond Section 1031" discloses;

establishing an accommodating entity to facilitate the like-kind exchange, (p.5, para. 2, qualified intermediary)

the accommodating entity being funded by a limited contribution obligation from a third party; (p.7, exhibit #3, 3<sup>rd</sup> party lender, application says bank or trust provides funding 0030) receiving a request from an exchanger that identifies a replacement property to utilize in the like-kind exchange; (p. 5, para. 1, replacement property identified to 3<sup>rd</sup> party intermediary) establishing a property owning entity to acquire an ownership interest in the replacement property, (p.6, para. 4)

the property owning entity being capitalized through a contribution by the accommodating entity of a promissory note in an amount appropriate for the like-kind exchange; (p. 6, example, para. 4, funds are directed from exchanger to the intermediary (accommodating entity) to the property owning entity)

Art Unit: 3691

exchanging a relinquished property of the exchanger with the replacement(p. 6, para. 7) property.

The property owning entity leasing the replacement property (p4. exhibit 2, bullet 2) to pay a debt service on the replacement property.(p.7 exhibit 3, bullet 2, interest payments) Beyond Section 1031 does not specifically disclose arms-length leasing terms and a purchase option. "Park your Reverse Exchange" teaches warehousing replacement property using an Arms-length transaction. (p.5, last paragraph)

Therefore It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the leasing disclosures of Beyond 1031 with the arms-length dealings teachings of "Park Your Exchange" for the purpose of convincing the IRS that the business deal had real burdens and benefits for the participants. ( p5, last para.) "Beyond 1031" and "Parking Your Exchange" do not specifically detail a purchase option combined with the lease. However, CFLA p. 8 teaches a fixed purchase option term for a lease for the purpose of allowing the lessee the right to purchase at a pre-agreed price at the end of the leasing time period. It would therefore have been obvious to one of ordinary skill in the art at the time of the invention to combine the leasing and arms-length disclosures of "Beyond 1031" and "Parking Your Exchange" with the teachings of CFLA that purchase options are terms commonly associated with leasing

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRUCE I. EBERSMAN whose telephone number is (571)270-3442. The examiner can normally be reached on 630am-5pm, Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alexander Kalinowski/  
Supervisory Patent Examiner, Art Unit 3691

Bruce I Ebersman  
Examiner  
Art Unit 3691

\*\*\*